

STATE OF MICHIGAN  
COURT OF APPEALS

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JASON KIMBALL,

Plaintiff-Appellee,

v

REBECCA KIMBALL,

Defendant-Appellant.

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UNPUBLISHED

July 29, 2014

No. 319862

Clinton Circuit Court

Family Division

LC No. 11-023116-DM

Before: STEPHENS, P.J., and HOEKSTRA and METER, JJ.

PER CURIAM.

In this case involving the custody of the parties' minor child, defendant appeals as of right the trial court's order dismissing her written objection to the written recommendation of the hearing referee regarding her motion to change the child's domicile to Ohio. For the reasons outlined below, we affirm.

Plaintiff and defendant were married and have one child together. On July 6, 2012, a judgment of divorce between plaintiff and defendant was entered that provided for joint legal and physical custody of the child. On November 26, 2012, defendant filed a motion to change the child's domicile to Ohio. On November 28, 2012, the trial court ordered a referee hearing regarding defendant's motion. The order contained the following provision:

The referee's recommendation shall become the order of the court if neither party objects within 21 days of mailing the recommendation. If either party objects, in writing, the Friend of the Court shall schedule a court hearing. The court hearing shall be limited to the specific written objections submitted within 21 days. Copies of the written objection must be filed with the County Clerk. Copies of the objection must be served upon the attorneys of record or the parties if either is not represented by an attorney, and the Friend of the Court. The court hearing will be conducted by a review of the transcript of the referee hearing by the court. *The objecting party must order and pay for the transcript within the 21 days [sic] period.* No additional testimony may be offered, except by the parties, unless a proper motion is filed requesting permission to present additional testimony. [Emphasis added.]

The referee hearing was held over a period of five days, and on October 1, 2013, the referee issued a written recommendation to deny defendant's motion. The recommendation also contained a signed notice from the trial court, which included the following paragraph:

It is the responsibility of the party requesting the court hearing judicial review to obtain a transcript of the proceedings of the Referee hearing. The transcript must be ordered and payment secured within the 21 day objection period, otherwise the Referee recommendation shall become the order of the court.

On October 22, 2013, defendant filed a written objection to the referee's recommendation, but failed to order a transcript of the hearings that were held before the referee. The next day the trial court dismissed defendant's objections without prejudice for failure to request or pay for the transcripts. Subsequently, defendant filed a motion to set aside the dismissal and reinstate her objection to the referee's recommendation. Defendant argued that her failure to request or pay for the transcript did not violate any court rule, statute, court order, or administrative order. The trial court treated defendant's motion as a motion for reconsideration, which it denied, finding that defendant had been afforded "a full and complete opportunity to be heard," that defendant had been informed of the steps necessary to perfect an appeal of the referee's recommendation, and that "the objection process utilized by the Court complies with the post-hearing procedures outlined in MCR 3.215."

Defendant argues that the trial court erred by enforcing the requirement that defendant request and pay for a hearing transcript within the 21-day objection period. We review motions for reconsideration for an abuse of discretion. *Corporan v Henton*, 282 Mich App 599, 605; 766 NW2d 903 (2009). "An abuse of discretion occurs when the decision results in an outcome falling outside the range of principled outcomes." *Keinz v Keinz*, 290 Mich App 137, 141; 799 NW2d 576 (2010).

Defendant argues that no court order required her to perfect her objection by requesting and paying for the hearing transcript within 21 days of the issuance of the referee's written recommendation. This argument, however, is contradicted by the record, which shows that the trial court's November 28, 2012, order explicitly stated that an objecting party was to request and pay for the hearing transcript within 21 days of the referee's written recommendation.

Defendant also argues that MCR 3.215(D)(4)(d) required the trial court, not defendant, to provide the transcript of the referee hearing. MCR 3.215(D)(4)(d) reads:

If the court on its own motion uses the record of the referee hearing to limit the judicial hearing under subrule (F), the court must make the record available to the parties and must allow the parties to file supplemental objections within 7 days of the date the record is provided to the parties. Following the judicial hearing, the court may assess the costs of preparing a transcript of the referee hearing to one or more of the parties. This subrule does not apply when a party requests the court to limit the judicial hearing under subrule (F) or when the court orders a transcript to resolve a dispute concerning what occurred at the referee hearing.

This provision only requires that the court “make the record available” to the parties; it does not require the court to secure production of the transcripts. Indeed, the provision of transcripts is dealt with more fully in subrule (4)(b), which reads: “If ordered by the court, or if stipulated by the parties, the referee must provide a transcript, verified by oath, of each hearing held. The cost of preparing a transcript must be apportioned equally between the parties, *unless otherwise ordered by the court.*” MCR 3.215(D)(4)(b) (emphasis added).

There is no evidence that the trial court failed to make the record available to defendant. Rather, there is only evidence that the trial court required defendant to request and pay for the transcript, as is authorized by MCR 3.215(D)(4)(b). Further, we note that while MCR 3.215(D)(4)(d) states that the trial court “may” assess the costs of preparing a transcript “[f]ollowing the judicial hearing,” the rule does not state the trial court may only assess the costs of preparing a transcript at that time. Defendant’s argument is without merit.

Defendant also contends that no statute authorized the trial court to require a party to request and pay for a hearing transcript. MCL 552.507(3), however, reads:

If ordered by the court, or if stipulated by the parties, a referee shall make a transcript, verified by oath, of each hearing held. The cost of preparing a transcript shall be apportioned equally between the parties, *unless otherwise ordered by the court.* [Emphasis added.]

The trial court’s November 28, 2012, order clearly assigned the cost of preparing the transcript to the objecting party, and such an assignment was within the court’s discretion under MCL 552.507(3).

Because a lawful court order required defendant to request and pay for the transcripts in question in order to perfect her written objection, the trial court did not err by dismissing the objection.

Defendant argues in the alternative that the trial court’s dismissal of defendant’s written objection was an unduly harsh punishment for defendant’s failure to request and pay for the hearing transcript within the objection period. Defendant cites *Dean v Tucker*, 182 Mich App 27, 32; 451 NW2d 571 (1990), for the proposition that a trial court must give “careful consideration to the factors involved and consider[] all of its options in determining what sanction [is] just and proper in the context of the case before it.”

Here, the trial court stated the following in its order denying defendant’s motion to set aside the dismissal and reinstate her objection:

Mother was afforded a full and complete opportunity to be heard; she fully availed herself of the (5-day) hearings; the recommendation issued by the Referee clearly identified the steps necessary to perfect an appeal of the Referee’s recommendation to the Court. Furthermore, the objection process utilized by the Court complies with the post-hearing procedures outlined in MCR 3.215. In summary, Defendant Mother had her days in Court to fully litigate her claims before the Referee. The issues Defendant raised in her motion to change domicile and her response to Plaintiff’s Motion to modify Custody were considered on the

merits. This Court is not convinced there is cause to grant Defendant's Motion for Reconsideration.

Defendant's suggestion that she was denied her day in court is belied by the record. Defendant took full advantage of the hearing process before the referee. She was given clear instructions on how to proceed with objections to the referee's recommendation, and contrary to her assertion, the court's imposition of the cost of preparing the transcript was authorized by statute and court rule. The trial court considered the context of this case when making its decision to dismiss defendant's written objection, and appellate relief is unwarranted. The trial court's dismissal was not disproportionate to defendant's procedural violation.

Affirmed.

/s/ Cynthia Diane Stephens

/s/ Joel P. Hoekstra

/s/ Patrick M. Meter